



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0321; FRL-10009-81-Region 9]

Air Plan Conditional Approval and Disapproval; Arizona; Maricopa County; Power Plants, Fuel Burning Equipment, and Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing conditional approvals for two revisions to the Maricopa County portion of the Arizona State Implementation Plan (SIP) concerning fuel burning equipment and internal combustion engines. The EPA is also finalizing a disapproval for one revision to the Maricopa County portion of the Arizona SIP concerning power plants. This action was proposed in the *Federal Register* on December 30, 2019, and concerns emissions of oxides of nitrogen (NO_x) from combustion sources.

DATES: This rule is effective on [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0321. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On December 30, 2019 (84 FR 71862), the EPA proposed action on the following rules that were submitted for incorporation into the Arizona SIP. Table 1 lists the rules on which the EPA is finalizing action, with the dates they were revised by the Maricopa County Air Quality Department (MCAQD), the dates they were submitted by the Arizona Department of Environmental Quality (ADEQ), and the type of action that the EPA is finalizing for each rule.

TABLE 1 - SUBMITTED RULES

Rule #	Rule Title	Revised	Submitted	Action
322	Power Plant Operations	November 2, 2016	June 22, 2017	Disapproval
323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources	November 2, 2016	June 22, 2017	Conditional Approval
324	Stationary Reciprocating Internal	November 2, 2016	June 22, 2017	Conditional

Rule #	Rule Title	Revised	Submitted	Action
	Combustion Engines (RICE)			Approval

1. Rule 322

We proposed to disapprove Rule 322 because the rule does not satisfy the requirements of section 110 and part D of the Clean Air Act (CAA or Act). The deficient provisions include the following:

- a. Air Pollution Control Officer discretion to approve alternative control strategies as reasonably available control technology (RACT) without further approval from the EPA.
- b. NO_x emission limits for steam generating units used for electricity generation that were less stringent than RACT.
- c. Overly broad exemptions from certain requirements during emergency fuel use operations.
- d. Air Pollution Control Officer discretion to extend compliance deadlines for applicable units.
- e. Absence of a compliance determination requirement, such as a regular stack testing requirement.

2. Rules 323 and 324

We proposed to conditionally approve these rules pursuant to CAA section 110(k)(4) because, although rule deficiencies preclude full SIP approval pursuant to section 110(k)(3), the rules largely comply with the relevant CAA requirements, and the MCAQD and the ADEQ have committed to provide the EPA with a SIP submission within one year of this final action that will include specific rule revisions that would adequately address the deficiencies.

Our proposed action contains more information on the rules, their deficiencies, the MCAQD and ADEQ commitments, and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received a request to clarify certain aspects of the proposed rulemaking from the MCAQD including the scope of the rulemaking, the context of our stringency analysis for NO_x emission limits, and the necessary testing requirements. The MCAQD's questions on our proposed rulemaking and our clarifications are included in a memorandum to the rulemaking docket. These comments did not change our assessment of the rules. No adverse comments were received, and no comments were submitted through *www.regulations.gov*.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. As authorized in section 110(k)(3) and 301(a) of the Act, the EPA disapproves Rule 322 for inclusion into the Arizona SIP. As a result, offset sanctions will be imposed unless the EPA approves a subsequent SIP revision that corrects the rule deficiencies within 18 months of the effective date of this action. Highway sanctions will be imposed unless the EPA approves a subsequent SIP revision that corrects the rule deficiencies within 24 months of the effective date of this action. These sanctions will be imposed under section 179 of the CAA and 40 CFR 52.31. Additionally, section 110(c) requires the EPA to promulgate a federal implementation plan (FIP) within 24 months unless we approve subsequent SIP revisions that correct the rule deficiencies.

Secondly, as authorized in sections 110(k)(4) and 301(a) of the CAA, the EPA

conditionally approves Rules 323 and 324 into the Arizona SIP. If the MCAQD and the ADEQ submit the necessary rule revisions by the specified deadline, and the EPA approves the submission, then the identified deficiencies will be cured. However, if the MCAQD, through the ADEQ, fails to submit these revisions within the required timeframe, the conditional approval will be treated as a disapproval for those rules for which the revisions are not submitted. This action incorporates the conditionally approved submitted rules into the Arizona SIP, including those provisions identified as deficient.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MCAQD rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of this final rulemaking, and will be incorporated by reference in the next update to the SIP compilation. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this SIP disapproval and conditional approval does not in-and-of itself create any new information collection burdens, but simply disapproves and conditionally approves certain State requirements for inclusion in the SIP.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This SIP disapproval and conditional approval does not in-and-of itself create any new requirements but simply disapproves and conditionally approves certain pre-existing State requirements for inclusion in the SIP.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action disapproves and conditionally approves pre-existing requirements under State or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal

governments, or to the private sector, result from this action.

F. Executive Order 13132: Federalism

This action does not have Federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is disapproving would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because this SIP disapproval and conditional approval does not in-and-of itself create any new regulations, but simply disapproves and conditionally approves certain pre-existing State requirements for inclusion in the SIP.

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant

regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**insert date 60 days after the date of publication in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: June 24, 2020.

John Busterud,
Regional Administrator,
Region IX.

For the reasons stated in the preamble, EPA is amending Part 52, Chapter I, Title 40 of the Code of Federal Regulations as follows:

PART 52 —APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart D - Arizona

2. Amend § 52.119 by adding paragraph (c)(2) to read as follows:

§52.119 Identification of plan—conditional approvals.

* * * * *

(c) * * *

(2) The EPA is conditionally approving portions of the Arizona SIP revisions submitted on June 22, 2017. The conditional approval is based upon the February 25, 2019 commitment from the State to submit a SIP revision consisting of rule revisions that will cure the identified deficiencies within twelve (12) months after the EPA's conditional approval. If the State fails to meet its commitment, the conditional approval will be treated as a disapproval with respect to the rules for which the corrections are not made. The following MCAQD rules are conditionally approved:

(i) Rule 323, *Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources* and;

(ii) Rule 324, *Stationary Reciprocating Internal Combustion Engines (RICE)*;

3. In § 52.120 amend Table 4 in paragraph (c) by revising the entries for “Rule 323” and “Rule 324” to read as follows:

§52.120 Identification of plan.

* * * * *

(c) * * *

Table 4—EPA-Approved Maricopa County Air Pollution Control Regulations

County citation	Title/subject	State effective date	EPA approval date	Additional explanation

Regulation III – Control of Air Contaminants				

Rule 323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources	11/02/2016	[INSERT DATE OF PUBLICATION] , [INSERT Federal Register CITATION]	Submitted on June 22, 2017
Rule 324	Stationary Reciprocating Internal Combustion Engines (RICE)	11/02/2016	[INSERT DATE OF PUBLICATION] , [INSERT Federal Register CITATION]	Submitted on June 22, 2017

* * * * *

4. Amend § 52.133 by adding paragraph (h) to read as follows:

§52.133 Rules and regulations.

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(h) Maricopa County Air Quality Department Rule 322 “Power Plant Operations”, submitted on June 22, 2017, contains: an option for the Air Pollution Control Officer to apply alternative emission limits to applicable equipment, and alternative compliance deadlines, without Agency approval of those limits and deadlines into the Arizona State Implementation Plan; limits that

have not been demonstrated to meet RACT; overly broad exemptions from certain requirements during emergency fuel use operations; and a lack of sufficient compliance determination requirements. Therefore, this rule is disapproved.

[FR Doc. 2020-14095 Filed: 7/17/2020 8:45 am; Publication Date: 7/20/2020]